

**BEFORE THE  
PHYSICAL THERAPY BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for  
Termination of Probation by:

ROSE TAM,

License No. PT 19425,

Petitioner.

Case No. 1D 2003 63333

OAH No. L2003050176

**DECISION**

The Physical Therapy Board of California heard this matter on May 19, 2003, in Orange, California. The Board members participating in the hearing and decision were Ellen Wilson, P.T.-President, Jay H. Segal, P.T.-Vice President, Louis Garcia, Jerry Kaufman, P.T., Donald Chu, Ph.D., P.T., and James Turner. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Mary E. Lynch, Esq., of Sheppard Mullin, represented Petitioner, who also appeared.

Jennevee H. de Guzman, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice.

Jurisdictional documents were presented. Testimony was taken and oral argument was given. The matter was submitted, following which the Board met in an executive session, and the matter was decided on May 19, 2003.

The below order, GRANTING the petition and TERMINATING Petitioner's probation, is based on the following Factual Findings and Legal Conclusions:

**FACTUAL FINDINGS**

1. On October 29, 1993, the Physical Therapy Board of California ("Board"), issued Rose Tam ("Petitioner") Physical Therapist License No. PT 19425.

2. In May of 2000, Steven K. Hartzell, Executive Officer of the Board, filed an Accusation before the Board in Case No. 1D-1999-62374 ("Accusation matter"). The Accusation arose from:

A. Petitioner's conviction on May 21, 1999, in the Orange County Superior Court, case no. CM99HM02564, based on her plea of guilty to violating California Penal Code sections 484/488 (petty theft), a misdemeanor crime substantially related to the qualifications, functions and duties of a physical therapist. Petitioner had attempted to shoplift \$ 111.00 of merchandise from a Macy's Department Store.

B. The acts underlying the conviction involved dishonesty substantially related to the qualifications, functions and duties of a physical therapist.

3. On July 19, 2001, the Board adopted, by Decision and Order, a Stipulated Settlement and Disciplinary Order between the parties in the Accusation matter, in which Petitioner admitted the truth of each allegation of the Accusation, including those described in Factual Finding 2.

Effective August 20, 2001, Petitioner's license was revoked, but the revocation was stayed and she was placed on probation for three (3) years under various terms and conditions.

4. The instant petition, filed with the Board on February 20, 2003 (after 18 months on probation, with another 18 months remaining), requests termination of Petitioner's probation. The primary reason for the petition is a desire to receive a promotion at work, which her employer will not do while she is on probation. Written evidence was received, consisting of Petitioner's narrative statement, verified recommendations from two (2) physical therapists holding California licenses, copies of the Board's prior disciplinary Order, and other documents.

5. Petitioner has completed all terms of her probation, including: passing the Board's Laws & Regulations Exam; paying in full costs to the Board of \$ 1,200.00 and probation monitoring costs (\$ 800.00 per year); performing over 40 hours of community service; complying with all probation monitoring requests.

6. Petitioner has had no further contacts with law enforcement, arrests, or convictions. No evidence established commission of any subsequent acts of dishonesty. Petitioner has continued practicing in her field without incident. She received positive evaluations at work, and ultimately a promotion, which has been suspended while she remains on probation. Petitioner continues her education in this field, as evidenced by her completing a 3-week NDTA course; attending courses at St. Joseph's Hospital; and regularly reading the Physical Therapy Journal and Clinical Management.

7. Petitioner also successfully expunged her conviction pursuant to Penal Code section 1203.4.

8. Petitioner has performed as a physical therapist for almost ten (10) years. No evidence was presented that she has harmed a client while performing as such, or that a complaint has ever been filed against her regarding the same.

9. Petitioner expressed sincere remorse for her past behavior, and vowed she will not repeat it, or the like.

10. Petitioner's probation monitor testified continued probation for Petitioner would serve no further purpose. The Office of the Attorney General does not oppose early termination of her probation.

### LEGAL CONCLUSIONS

1. The burden in a petition for reduction of an administrative penalty rests, at all times, with the petitioner. *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.

2. Cause exists for early termination of Petitioner's probation.

Government Code section 11522 provides that a person whose license has been disciplined may petition the governing agency for a reduction of penalty, and governs such petitions unless another, more specific, statute contains different provisions.

B&P Code section 2661.7 specifically applies to the Board, and provides a petition may be brought for early termination of probation, after a period of not less than two (2) years from the effective date of a probation of three (3) years or more (subdivision a). The petition must state any facts required by the Board and be accompanied by at least two verified recommendations from physical therapists licensed by the Board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed (subdivision b). The Board, or the administrative law judge, hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, the petitioner's rehabilitative efforts, general reputation for truth, and professional ability (subdivision d).

In this case, Petitioner has established that, with due consideration for the public safety, it would not be against the public interest for an early termination of her probation. The petition contained all jurisdictional contents. Petitioner has completed her rehabilitation and complied with all terms of her probation. She has continued to do well at work, has had no further contacts with law enforcement, and has not engaged in any dishonest conduct. She is remorseful and displays a positive attitude about her situation. No evidence of deficient performance as a physical therapist is indicated. No further purpose is served by continuing her probation. Factual Findings 1-10.

However, since an early termination of probation may not occur before two (2) years have lapsed since the effective date of the involved disciplinary order (Petitioner's probation was effective 8/20/2001), termination of her probation shall not be effective earlier than August 20, 2003. B&P Code section 2661.7.

ORDER

The petition is GRANTED. Petitioner Rose Tam's probation is TERMINATED, effective no earlier than August 20, 2003.

IT IS SO ORDERED. This Decision shall be effective August 20, 2003.

Dated: July 2, 2003

Original signed by Ellen Wilson  
ELLEN WILSON, P.T., President,  
Physical Therapy Board of California